

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE MARCH 15, 2012

AMENDED IN SENATE FEBRUARY 23, 2012

SENATE BILL

No. 978

**Introduced by Senators Vargas and Price
(Principal coauthor: Senator Blakeslee)**

January 23, 2012

An act to amend Section 10232.5 of, and to add Sections 10232.3 and 10232.45 to, the Business and Professions Code, and to amend Sections 25102 and 25113 of, and to add Section 25102.2 to, the Corporations Code, relating to securities transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 978, as amended, Vargas. Securities transactions: exemption from qualification requirements.

(1) Existing law, the Corporate Securities Law of 1968, regulates the offer and sale of securities in this state by the Commissioner of Corporations. Existing law requires an issuer of securities to qualify with the commissioner the offer and sale of securities unless the transaction is subject to one of several specified exemptions from the qualification requirements. A willful violation of these provisions is a crime.

Existing law exempts from the qualification requirements the offer or sale of any security made to no more than 35 people, as specified, and allows the commissioner to require the issuer to file a notice of transactions. Existing law provides that the exemption remains available to an issuer that fails to file the notice or files the notice after the time

specified by the commissioner. Existing law requires an issuer relying on that exemption to file a notice within 15 business days following discovery of the failure to timely file the notice, or after demand of the commissioner, whichever is earlier.

This bill would require the commissioner to require the issuer to file a notice of transactions in connection with that exemption.

~~Existing law also exempts from those qualification requirements an offer or sale of any evidence of indebtedness or guarantee thereof, in a transaction not involving a public offering, and does not require an issuer to file a notice of transactions made in reliance upon that exemption.~~

~~This bill would apply the same notice requirements to the latter exemption as would be applied with respect to the exemption for offers to no more than 35 people described above.~~

Existing federal law defines the term “accredited investor,” for purposes of applying securities registration requirements.

This bill, *for an offering which involves the offer or sale of securities to nonaccredited investors or which involves the offer or sale of securities that are not registered with the United States Securities and Exchange Commission*, would require an issuer that is principally engaged in the business of purchasing, selling, financing, or brokering real estate, and that claims an exemption, to make reasonable efforts to ensure that the investment is suitable for the investor, as specified, to provide the basis upon which the issuer shall make that determination, and to maintain the information used to make the determination for 4 years.

This bill would require the commissioner, ~~by rule,~~ to require an issuer that relies upon an exemption from the qualification requirements and that is principally engaged in the business of purchasing, selling, financing, or brokering real estate, *for an offering which involves the offer or sale of securities to nonaccredited investors or which involves the offer or sale of securities that are not registered with the United States Securities and Exchange Commission*, to provide information regarding the nature of the proposed offering on a form prescribed by the commissioner, as specified, *including, but not limited to, the offering disclosure documents provided to prospective investors*. The bill would also require the commissioner to prepare an annual report regarding the securities offerings and sales authorized by permit issued by the commissioner under specified provisions of existing law and to make

the report publicly available by posting the report on the Internet Web site of the Department of Corporations.

(2) Existing law exempts from the qualification requirements, subject to complying with specified requirements, a transaction that involves the sale of a series of notes secured directly by an interest in real property or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, having no more than 10 investors. Existing law requires a real estate broker to indicate in the real estate broker's transaction file the provisions of law pertaining to qualification or exemption from qualification under which a transaction is being conducted. Existing law requires a real estate broker to file certain information with the commissioner relative to conducting these transactions that are exempt from qualification. Existing law requires a real estate broker to submit a copy of the information in the real estate broker's transaction file relative to qualification or exemption from qualification for a transaction to any investor from whom the real estate broker obtains funds in connection with the transaction.

This bill would require that a transaction that involves the sale of a note secured directly by an interest in real property or the sale of an undivided interest in a note secured directly by real property equivalent to a series transaction be conducted in compliance with those requirements.

(3) Existing law requires a real estate broker negotiating a loan, as specified, secured by a lien on real property or a business opportunity or the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, to provide a disclosure statement, containing specified information regarding the proposed transaction, to a prospective lender or a prospective purchaser, respectively.

This bill would add to the information required to be included in the disclosure statement a statement that the broker has a responsibility to make reasonable efforts to determine that the loan or the purchase, respectively, is a suitable and appropriate investment for the lender or purchaser, respectively.

Because this bill would expand the scope of existing crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10232.3 is added to the Business and
2 Professions Code, to read:

3 10232.3. (a) Any transaction that involves the sale of or offer
4 to sell a note secured directly by an interest in one or more parcels
5 of real property or the sale of an undivided interest in a note secured
6 directly by one or more parcels of real property shall adhere to all
7 of the following:

8 (1) Except as provided in paragraph (2), the aggregate principal
9 amount of the note or interest sold, together with the unpaid
10 principal amount of any encumbrances upon the real property
11 senior thereto, shall not exceed the following percentages of the
12 current market value of each parcel of the real property, as
13 determined in writing by the broker or appraiser pursuant to Section
14 10232.6, plus the amount for which the payment of principal and
15 interest in excess of the percentage of current market value is
16 insured for the benefit of the holders of the note or interest by an
17 insurer admitted to do business in this state by the Insurance
18 Commissioner:

19
20 (A) Single-family residence, owner occupied..... 80%
21 (B) Single-family residence, not owner occupied..... 75%
22 (C) Commercial and income-producing properties..... 65%
23 (D) Single-family residentially zoned lot or parcel which has installed
24 offsite improvements including drainage, curbs, gutters, sidewalks,
25 paved roads, and utilities as mandated by the political subdivision
26 having jurisdiction over the lot or parcel..... 65%
27 (E) Land that has been zoned for (and if required, approved for
28 subdivision as) commercial or residential development..... 50%
29 (F) Other real property..... 35%
30

31 (2) The percentage amounts specified in paragraph (1) may be
32 exceeded when and to the extent that the broker determines that
33 the encumbrance of the property in excess of these percentages is

1 reasonable and prudent considering all relevant factors pertaining
2 to the real property. However, in no event shall the aggregate
3 principal amount of the note or interest sold, together with the
4 unpaid principal amount of any encumbrances upon the property
5 senior thereto, exceed 80 percent of the current fair market value
6 of improved real property or 50 percent of the current fair market
7 value of unimproved real property, except in the case of a
8 single-family zoned lot or parcel as defined in paragraph (1), which
9 shall not exceed 65 percent of the current fair market value of that
10 lot or parcel, plus the amount insured as specified in paragraph
11 (1). A written statement shall be prepared by the broker that sets
12 forth the material considerations and facts that the broker relies
13 upon for his or her determination, which shall be retained as a part
14 of the broker's record of the transaction. Either a copy of the
15 statement or the information contained therein shall be included
16 in the disclosures required pursuant to Section 10232.5.

17 (3) A copy of the appraisal or the broker's evaluation, for each
18 parcel of real property securing the note or interest, shall be
19 delivered to the purchaser. The broker shall advise the purchaser
20 of his or her right to receive a copy. For purposes of this paragraph,
21 "appraisal" means a written estimate of value based upon the
22 assembling, analyzing, and reconciling of facts and value indicators
23 for the real property in question. A broker shall not purport to make
24 an appraisal unless the person so employed is qualified on the basis
25 of special training, preparation, or experience.

26 (4) For construction or rehabilitation loans, where the amount
27 withheld for construction or rehabilitation at the start of the project
28 exceeds one hundred thousand dollars (\$100,000), the term "current
29 market value" may be deemed to be the value of the completed
30 project if all of the following safeguards are met:

31 (A) An independent neutral third-party escrow holder is used
32 for all deposits and disbursements relating to the construction or
33 rehabilitation of the secured property.

34 (B) The loan is fully funded, with the entire loan amount to be
35 deposited in escrow prior to recording of the deed or deeds of trust.

36 (C) A comprehensive, detailed draw schedule is used to ensure
37 proper and timely disbursements to allow for completion of the
38 project.

39 (D) The disbursement draws from the escrow account are based
40 on verification from an independent qualified person who certifies

1 that the work completed to date meets the related codes and
2 standards and that the draws were made in accordance with the
3 construction contract and draw schedule. For purposes of this
4 subparagraph, “independent qualified person” means a person who
5 is not an employee, agent, or affiliate of the broker and who is a
6 licensed architect, general contractor, structural engineer, or active
7 local government building inspector acting in his or her official
8 capacity.

9 (E) An appraisal is completed by a qualified and licensed
10 appraiser in accordance with the Uniform Standards of Professional
11 Appraisal Practice (USPAP).

12 (F) The documentation includes a detailed description of the
13 actions that may be taken in the event of a failure to complete the
14 project, whether that failure is due to default, insufficiency of
15 funds, or other causes.

16 (G) The entire amount of the loan does not exceed two million
17 five hundred thousand dollars (\$2,500,000).

18 (5) For construction or rehabilitation loans, where the amount
19 withheld for construction or rehabilitation at the start of the project
20 is one hundred thousand dollars (\$100,000) or less, the term
21 “current market value” may be deemed to be the value of the
22 completed project if all of the following safeguards are met:

23 (A) The loan is fully funded, with the entire loan amount to be
24 deposited in escrow prior to recording of the deed or deeds of trust.

25 (B) A comprehensive, detailed draw schedule is used to ensure
26 proper and timely disbursements to allow for completion of the
27 project.

28 (C) An appraisal is completed by a qualified and licensed
29 appraiser in accordance with the Uniform Standards of Professional
30 Appraisal Practice (USPAP).

31 (D) The documentation includes a detailed description of the
32 actions that may be taken in the event of a failure to complete the
33 project, whether that failure is due to default, insufficiency of
34 funds, or other causes.

35 (E) The entire amount of the loan does not exceed two million
36 five hundred thousand dollars (\$2,500,000).

37 (6) If a note or an interest will be secured by more than one
38 parcel of real property, for the purpose of determining the
39 maximum amount of the note or interest, each security property
40 shall be assigned a portion of the note or interest which shall not

1 exceed the percentage of current market value determined by, and
2 in accordance with, the provisions of paragraphs (1) and (2).

3 (b) The note or interest shall not be sold, unless the purchaser
4 meets one or both of the qualifications of income or net worth set
5 forth below and signs a statement, which shall be retained by the
6 broker for four years, conforming to the following:

7
8 “Transaction Identifier: _____

9 Name of Purchaser: _____ Date: _____

10 Check either one of the following, if true:

- 11 () My investment in the transaction does not exceed 10% of my net worth,
12 exclusive of home, furnishings, and automobiles.
13 () My investment in the transaction does not exceed 10% of my adjusted
14 gross income for federal income tax purposes for my last tax year or,
15 in the alternative, as estimated for the current year.

16
17 _____
18 Signature”

19 SEC. 2. Section 10232.45 is added to the Business and
20 Professions Code, to read:

21 10232.45. (a) Any broker subject to the provisions of Section
22 10232.3 or Article 6 (commencing with Section 10237) shall make
23 reasonable efforts to ensure all of the following with respect to the
24 offer or sale of notes or interest in notes to be secured by a lien on
25 real property or a business opportunity:

26 (1) All persons to whom notes or interests are sold can be
27 reasonably assumed to have the capacity to understand the
28 fundamental aspects of the investment, by reason of their
29 educational, business, or financial experience.

30 (2) All persons to whom notes or interests are sold can bear the
31 economic risk of the investment.

32 (3) The investment in the notes or interests is suitable and
33 appropriate for the purchaser, given the purchaser’s investment
34 objectives, portfolio structure, and financial situation.

35 (b) A broker shall make this determination on the basis of
36 information he or she obtains from the purchaser. Relevant
37 information for this purpose includes, at least, the age, investment
38 objective, investment experience, income, net worth, financial
39 situation, and other investments of the prospective purchaser, as

1 well as any other pertinent factors the commissioner shall establish
2 through regulation.

3 (c) A broker shall maintain records of the information used to
4 determine that an investment is suitable and appropriate for each
5 purchaser and shall retain these records for at least four years.

6 SEC. 3. Section 10232.5 of the Business and Professions Code
7 is amended to read:

8 10232.5. (a) If the real estate broker is performing acts
9 described in subdivision (d) of Section 10131 in negotiating a loan
10 to be secured by a lien on real property or on a business
11 opportunity, the statement required to be given to the prospective
12 lender shall include, but shall not necessarily be limited to, the
13 following information:

14 (1) Address or other means of identification of the real property
15 that is to be the security for the borrower's obligation.

16 (2) Estimated fair market value of the securing property as
17 determined by an appraisal, a copy of which shall be provided to
18 the lender. However, a lender may waive the requirement of an
19 independent appraisal in writing, on a case-by-case basis, in which
20 case, the real estate broker shall provide the broker's written
21 estimated fair market value of the securing property, which shall
22 include the objective data upon which the broker's estimate is
23 based.

24 (3) Age, size, type of construction, and a description of
25 improvements to the property if contained in the appraisal or as
26 represented to the broker by the prospective borrower.

27 (4) Identity, occupation, employment, income, and credit data
28 about the prospective borrower or borrowers as represented to the
29 broker by the prospective borrower or borrowers.

30 (5) Terms of the promissory note to be given to the lender.

31 (6) Pertinent information concerning all encumbrances which
32 constitute liens against the securing property and, to the extent of
33 actual knowledge of the broker, pertinent information about other
34 loans that the borrower expects or anticipates will result in a lien
35 being recorded against the property securing the promissory note
36 to be created in favor of the prospective lender.

37 As used in this paragraph, actual knowledge with respect to any
38 anticipated or expected loan, means knowledge gained by the
39 broker through arranging that other loan or receipt of written
40 notification of that other loan. In this regard, the broker shall also

1 provide to the prospective lender the option to apply to purchase
2 a title insurance policy or an endorsement to an existing title
3 insurance policy covering the securing property, and a copy of a
4 written loan application, and a credit report.

5 (7) Provisions for servicing of the loan, if any, including
6 disposition of the late charge and prepayment penalty fees paid by
7 the borrower.

8 (8) Detailed information concerning any proposed arrangement
9 under which the prospective lender along with persons not
10 otherwise associated with him or her will be joint beneficiaries or
11 obligees.

12 (9) If the solicitation is subject to the provisions of Section
13 10231.2, a detailed statement of the intended use and disposition
14 of the funds being solicited including an explanation of the nature
15 and extent of the benefits to be directly or indirectly derived by
16 the broker.

17 (10) If the broker is subject to the provisions of Section 10232
18 or Article 6 (commencing with Section 10237), a statement that
19 the broker has a responsibility to make reasonable efforts to
20 determine that the loan is a suitable and appropriate investment
21 for the lender, based on information provided by the lender
22 regarding the lender's financial situation and investment objectives.

23 (b) If the real estate broker is performing acts described in
24 subdivision (e) of Section 10131 or in Section 10131.1 in
25 negotiating the sale of a real property sales contract or promissory
26 note secured directly or collaterally by a lien on real property, the
27 statement required to be given to the prospective purchaser by
28 Section 10232.4 shall include, but shall not necessarily be limited
29 to, the following information:

30 (1) Address or other means of identification of the real property
31 that is the security for the trustor's or vendee's obligation.

32 (2) Estimated fair market value of the real property as
33 determined by an appraisal, a copy of which shall be provided to
34 the prospective purchaser. However, a purchaser may waive the
35 requirement of an independent appraisal in writing, on a
36 case-by-case basis, in which case, the real estate broker shall
37 provide the broker's written estimated fair market value of the
38 securing property, which shall include the objective data upon
39 which the broker's estimate is based.

1 (3) Age, size, type of construction, and a description of
2 improvements to the real property if known by the broker.

3 (4) Information available to the broker relative to the ability of
4 the trustor or vendee to meet his or her contractual obligations
5 under the note or contract including the trustor's or vendee's
6 payment history under the note or contract.

7 (5) Terms of the contract or note including the principal balance
8 owing.

9 (6) Provisions for servicing of the note or contract, if any,
10 including disposition of late charge, prepayment penalty or other
11 fees or charges paid by the trustor or vendee.

12 (7) Detailed information concerning any proposed arrangement
13 under which the prospective purchaser along with persons not
14 otherwise associated with him or her will be joint beneficiaries or
15 obligees. In this regard, the broker shall also provide to the
16 prospective purchaser the option to apply to purchase a title
17 insurance policy or an endorsement to an existing title insurance
18 policy covering the real property and, if available from the seller
19 of the note or contract or from the original lender, a copy of a
20 written loan application, and a credit report.

21 (8) A statement as to whether the dealer is acting as a principal
22 or as an agent in the transaction with the prospective purchaser.

23 (9) If the broker is subject to the provisions of Section 10232
24 or Article 6 (commencing with Section 10237), a statement that
25 the broker has a responsibility to make reasonable efforts to
26 determine that the purchase is a suitable and appropriate investment
27 for the purchaser, based on information provided by the purchaser
28 regarding the purchaser's financial situation and investment
29 objectives.

30 SEC. 4. Section 25102 of the Corporations Code is amended
31 to read:

32 25102. The following transactions are exempted from the
33 provisions of Section 25110:

34 (a) Any offer (but not a sale) not involving any public offering
35 and the execution and delivery of any agreement for the sale of
36 securities pursuant to the offer if (1) the agreement contains
37 substantially the following provision: "The sale of the securities
38 that are the subject of this agreement has not been qualified with
39 the Commissioner of Corporations of the State of California and
40 the issuance of the securities or the payment or receipt of any part

1 of the consideration therefor prior to the qualification is unlawful,
2 unless the sale of securities is exempt from the qualification by
3 Section 25100, 25102, or 25105 of the California Corporations
4 Code. The rights of all parties to this agreement are expressly
5 conditioned upon the qualification being obtained, unless the sale
6 is so exempt”; and (2) no part of the purchase price is paid or
7 received and none of the securities are issued until the sale of the
8 securities is qualified under this law unless the sale of securities
9 is exempt from the qualification by this section, Section 25100,
10 or 25105.

11 (b) Any offer (but not a sale) of a security for which a
12 registration statement has been filed under the Securities Act of
13 1933 but has not yet become effective, or for which an offering
14 statement under Regulation A has been filed but has not yet been
15 qualified, if no stop order or refusal order is in effect and no public
16 proceeding or examination looking towards an order is pending
17 under Section 8 of the act and no order under Section 25140 or
18 subdivision (a) of Section 25143 is in effect under this law.

19 (c) Any offer (but not a sale) and the execution and delivery of
20 any agreement for the sale of securities pursuant to the offer as
21 may be permitted by the commissioner upon application. Any
22 negotiating permit under this subdivision shall be conditioned to
23 the effect that none of the securities may be issued and none of
24 the consideration therefor may be received or accepted until the
25 sale of the securities is qualified under this law.

26 (d) Any transaction or agreement between the issuer and an
27 underwriter or among underwriters if the sale of the securities is
28 qualified, or exempt from qualification, at the time of distribution
29 thereof in this state, if any.

30 (e) ~~(1)~~ Any offer or sale of any evidence of indebtedness,
31 whether secured or unsecured, and any guarantee thereof, in a
32 transaction not involving any public offering.

33 ~~(2) The commissioner shall by rule require the issuer to file a~~
34 ~~notice of transactions under this subdivision. The failure to file~~
35 ~~the notice or the failure to file the notice within the time specified~~
36 ~~by the rule of the commissioner shall not affect the availability of~~
37 ~~the exemption. Any issuer that fails to file the notice as provided~~
38 ~~by rule of the commissioner shall, within 15 business days after~~
39 ~~discovery of the failure to file the notice or after demand by the~~
40 ~~commissioner, whichever occurs first, file the notice and pay to~~

1 the commissioner a fee equal to the fee payable had the transaction
2 been qualified under Section 25110. Neither the filing of the notice
3 nor the failure by the commissioner to comment thereon precludes
4 the commissioner from taking any action that the commissioner
5 deems necessary or appropriate under this division with respect
6 to the offer and sale of the securities.

7 (f) Any offer or sale of any security in a transaction (other than
8 an offer or sale to a pension or profit-sharing trust of the issuer)
9 that meets each of the following criteria:

10 (1) Sales of the security are not made to more than 35 persons,
11 including persons not in this state.

12 (2) All purchasers either have a preexisting personal or business
13 relationship with the offeror or any of its partners, officers,
14 directors or controlling persons, or managers (as appointed or
15 elected by the members) if the offeror is a limited liability
16 company, or by reason of their business or financial experience or
17 the business or financial experience of their professional advisers
18 who are unaffiliated with and who are not compensated by the
19 issuer or any affiliate or selling agent of the issuer, directly or
20 indirectly, could be reasonably assumed to have the capacity to
21 protect their own interests in connection with the transaction.

22 (3) Each purchaser represents that the purchaser is purchasing
23 for the purchaser's own account (or a trust account if the purchaser
24 is a trustee) and not with a view to or for sale in connection with
25 any distribution of the security.

26 (4) The offer and sale of the security is not accomplished by
27 the publication of any advertisement. The number of purchasers
28 referred to above is exclusive of any described in subdivision (i),
29 any officer, director, or affiliate of the issuer, or manager (as
30 appointed or elected by the members) if the issuer is a limited
31 liability company, and any other purchaser who the commissioner
32 designates by rule. For purposes of this section, a husband and
33 wife (together with any custodian or trustee acting for the account
34 of their minor children) are counted as one person and a
35 partnership, corporation, or other organization that was not
36 specifically formed for the purpose of purchasing the security
37 offered in reliance upon this exemption, is counted as one person.
38 The commissioner shall by rule require the issuer to file a notice
39 of transactions under this subdivision.

1 The failure to file the notice or the failure to file the notice within
2 the time specified by the rule of the commissioner shall not affect
3 the availability of the exemption. Any issuer that fails to file the
4 notice as provided by rule of the commissioner shall, within 15
5 business days after discovery of the failure to file the notice or
6 after demand by the commissioner, whichever occurs first, file the
7 notice and pay to the commissioner a fee equal to the fee payable
8 had the transaction been qualified under Section 25110. Neither
9 the filing of the notice nor the failure by the commissioner to
10 comment thereon precludes the commissioner from taking any
11 action that the commissioner deems necessary or appropriate under
12 this division with respect to the offer and sale of the securities.

13 (g) Any offer or sale of conditional sale agreements, equipment
14 trust certificates, or certificates of interest or participation therein
15 or partial assignments thereof, covering the purchase of railroad
16 rolling stock or equipment or the purchase of motor vehicles,
17 aircraft, or parts thereof, in a transaction not involving any public
18 offering.

19 (h) Any offer or sale of voting common stock by a corporation
20 incorporated in any state if, immediately after the proposed sale
21 and issuance, there will be only one class of stock of the
22 corporation outstanding that is owned beneficially by no more than
23 35 persons, provided all of the following requirements have been
24 met:

25 (1) The offer and sale of the stock is not accompanied by the
26 publication of any advertisement, and no selling expenses have
27 been given, paid, or incurred in connection therewith.

28 (2) The consideration to be received by the issuer for the stock
29 to be issued consists of any of the following:

30 (A) Only assets (which may include cash) of an existing business
31 enterprise transferred to the issuer upon its initial organization, of
32 which all of the persons who are to receive the stock to be issued
33 pursuant to this exemption were owners during, and the enterprise
34 was operated for, a period of not less than one year immediately
35 preceding the proposed issuance, and the ownership of the
36 enterprise immediately prior to the proposed issuance was in the
37 same proportions as the shares of stock are to be issued.

38 (B) Only cash or cancellation of indebtedness for money
39 borrowed, or both, upon the initial organization of the issuer,
40 provided all of the stock is issued for the same price per share.

1 (C) Only cash, provided the sale is approved in writing by each
2 of the existing shareholders and the purchaser or purchasers are
3 existing shareholders.

4 (D) In a case where after the proposed issuance there will be
5 only one owner of the stock of the issuer, only any legal
6 consideration.

7 (3) No promotional consideration has been given, paid, or
8 incurred in connection with the issuance. Promotional consideration
9 means any consideration paid directly or indirectly to a person
10 who, acting alone or in conjunction with one or more other persons,
11 takes the initiative in founding and organizing the business or
12 enterprise of an issuer for services rendered in connection with the
13 founding or organizing.

14 (4) A notice in a form prescribed by rule of the commissioner,
15 signed by an active member of the State Bar of California, is filed
16 with or mailed for filing to the commissioner not later than 10
17 business days after receipt of consideration for the securities by
18 the issuer. That notice shall contain an opinion of the member of
19 the State Bar of California that the exemption provided by this
20 subdivision is available for the offer and sale of the securities. The
21 failure to file the notice as required by this subdivision and the
22 rules of the commissioner shall not affect the availability of this
23 exemption. An issuer who fails to file the notice within the time
24 specified by this subdivision shall, within 15 business days after
25 discovery of the failure to file the notice or after demand by the
26 commissioner, whichever occurs first, file the notice and pay to
27 the commissioner a fee equal to the fee payable had the transaction
28 been qualified under Section 25110. The notice, except when filed
29 on behalf of a California corporation, shall be accompanied by an
30 irrevocable consent, in the form that the commissioner by rule
31 prescribes, appointing the commissioner or his or her successor in
32 office to be the issuer's attorney to receive service of any lawful
33 process in any noncriminal suit, action, or proceeding against it
34 or its successor that arises under this law or any rule or order
35 hereunder after the consent has been filed, with the same force and
36 validity as if served personally on the issuer. An issuer on whose
37 behalf a consent has been filed in connection with a previous
38 qualification or exemption from qualification under this law (or
39 application for a permit under any prior law if the application or
40 notice under this law states that the consent is still effective) need

1 not file another. Service may be made by leaving a copy of the
2 process in the office of the commissioner, but it is not effective
3 unless (A) the plaintiff, who may be the commissioner in a suit,
4 action, or proceeding instituted by him or her, forthwith sends
5 notice of the service and a copy of the process by registered or
6 certified mail to the defendant or respondent at its last address on
7 file with the commissioner, and (B) the plaintiff's affidavit of
8 compliance with this section is filed in the case on or before the
9 return day of the process, if any, or within the further time as the
10 court allows.

11 (5) Each purchaser represents that the purchaser is purchasing
12 for the purchaser's own account, or a trust account if the purchaser
13 is a trustee, and not with a view to or for sale in connection with
14 any distribution of the stock.

15 For the purposes of this subdivision, all securities held by a
16 husband and wife, whether or not jointly, shall be considered to
17 be owned by one person, and all securities held by a corporation
18 that has issued stock pursuant to this exemption shall be considered
19 to be held by the shareholders to whom it has issued the stock.

20 All stock issued by a corporation pursuant to this subdivision as
21 it existed prior to the effective date of the amendments to this
22 section made during the 1996 portion of the 1995–96 Regular
23 Session that required the issuer to have stamped or printed
24 prominently on the face of the stock certificate a legend in a form
25 prescribed by rule of the commissioner restricting transfer of the
26 stock in a manner provided for by that rule shall not be subject to
27 the transfer restriction legend requirement and, by operation of
28 law, the corporation is authorized to remove that transfer restriction
29 legend from the certificates of those shares of stock issued by the
30 corporation pursuant to this subdivision as it existed prior to the
31 effective date of the amendments to this section made during the
32 1996 portion of the 1995–96 Regular Session.

33 (i) Any offer or sale (1) to a bank, savings and loan association,
34 trust company, insurance company, investment company registered
35 under the Investment Company Act of 1940, pension or
36 profit-sharing trust (other than a pension or profit-sharing trust of
37 the issuer, a self-employed individual retirement plan, or individual
38 retirement account), or other institutional investor or governmental
39 agency or instrumentality that the commissioner may designate
40 by rule, whether the purchaser is acting for itself or as trustee, or

(2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of the corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer, provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if either of the following apply:

(1) All of the purchasers meet one of the following requirements:

(A) Are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged).

(B) Are persons described in paragraph (1) of subdivision (i).

(C) Have been found by the commissioner upon written application to be substantially engaged in the business of drilling for, producing, or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded).

(2) The security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank, provided that each purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the security.

(k) Any offer or sale of any security under, or pursuant to, a plan of reorganization under Chapter 11 of the federal bankruptcy law that has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

(l) Any offer or sale of an option, warrant, put, call, or straddle, and any guarantee of any of these securities, by a person who is not the issuer of the security subject to the right, if the transaction, had it involved an offer or sale of the security subject to the right by the person, would not have violated Section 25110 or 25130.

(m) Any offer or sale of a stock to a pension, profit-sharing, stock bonus, or employee stock ownership plan, provided that (1) the plan meets the requirements for qualification under Section 401 of the Internal Revenue Code, and (2) the employees are not

1 required or permitted individually to make any contributions to
2 the plan. The exemption provided by this subdivision shall not be
3 affected by whether the stock is contributed to the plan, purchased
4 from the issuer with contributions by the issuer or an affiliate of
5 the issuer, or purchased from the issuer with funds borrowed from
6 the issuer, an affiliate of the issuer, or any other lender.

7 (n) Any offer or sale of any security in a transaction, other than
8 an offer or sale of a security in a rollup transaction, that meets all
9 of the following criteria:

10 (1) The issuer is (A) a California corporation or foreign
11 corporation that, at the time of the filing of the notice required
12 under this subdivision, is subject to Section 2115, or (B) any other
13 form of business entity, including without limitation a partnership
14 or trust organized under the laws of this state. The exemption
15 provided by this subdivision is not available to a “blind pool”
16 issuer, as that term is defined by the commissioner, or to an
17 investment company subject to the Investment Company Act of
18 1940.

19 (2) Sales of securities are made only to qualified purchasers or
20 other persons the issuer reasonably believes, after reasonable
21 inquiry, to be qualified purchasers. A corporation, partnership, or
22 other organization specifically formed for the purpose of acquiring
23 the securities offered by the issuer in reliance upon this exemption
24 may be a qualified purchaser if each of the equity owners of the
25 corporation, partnership, or other organization is a qualified
26 purchaser. Qualified purchasers include the following:

27 (A) A person designated in Section 260.102.13 of Title 10 of
28 the California Code of Regulations.

29 (B) A person designated in subdivision (i) or any rule of the
30 commissioner adopted thereunder.

31 (C) A pension or profit-sharing trust of the issuer, a
32 self-employed individual retirement plan, or an individual
33 retirement account, if the investment decisions made on behalf of
34 the trust, plan, or account are made solely by persons who are
35 qualified purchasers.

36 (D) An organization described in Section 501(c)(3) of the
37 Internal Revenue Code, corporation, Massachusetts or similar
38 business trust, or partnership, each with total assets in excess of
39 five million dollars (\$5,000,000) according to its most recent
40 audited financial statements.

(E) With respect to the offer and sale of one class of voting common stock of an issuer or of preferred stock of an issuer entitling the holder thereof to at least the same voting rights as the issuer's one class of voting common stock, provided that the issuer has only one-class voting common stock outstanding upon consummation of the offer and sale, a natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of two hundred fifty thousand dollars (\$250,000) and had, during the immediately preceding tax year, gross income in excess of one hundred thousand dollars (\$100,000) and reasonably expects gross income in excess of one hundred thousand dollars (\$100,000) during the current tax year or (ii) has a minimum net worth of five hundred thousand dollars (\$500,000). "Net worth" shall be determined exclusive of home, home furnishings, and automobiles. Other assets included in the computation of net worth may be valued at fair market value.

Each natural person specified above, by reason of his or her business or financial experience, or the business or financial experience of his or her professional adviser, who is unaffiliated with and who is not compensated, directly or indirectly, by the issuer or any affiliate or selling agent of the issuer, can be reasonably assumed to have the capacity to protect his or her interests in connection with the transaction. The amount of the investment of each natural person shall not exceed 10 percent of the net worth, as determined by this subparagraph, of that natural person.

(F) Any other purchaser designated as qualified by rule of the commissioner.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or trust account, if the purchaser is a trustee) and not with a view to or for sale in connection with a distribution of the security.

(4) Each natural person purchaser, including a corporation, partnership, or other organization specifically formed by natural persons for the purpose of acquiring the securities offered by the issuer, receives, at least five business days before securities are sold to, or a commitment to purchase is accepted from, the purchaser, a written offering disclosure statement that shall meet the disclosure requirements of Regulation D (17 C.F.R. 230.501 et seq.), and any other information as may be prescribed by rule

1 of the commissioner, provided that the issuer shall not be obligated
2 pursuant to this paragraph to provide this disclosure statement to
3 a natural person qualified under Section 260.102.13 of Title 10 of
4 the California Code of Regulations. The offer or sale of securities
5 pursuant to a disclosure statement required by this paragraph that
6 is in violation of Section 25401, or that fails to meet the disclosure
7 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
8 not render unavailable to the issuer the claim of an exemption from
9 Section 25110 afforded by this subdivision. This paragraph does
10 not impose, directly or indirectly, any additional disclosure
11 obligation with respect to any other exemption from qualification
12 available under any other provision of this section.

13 (5) (A) A general announcement of proposed offering may be
14 published by written document only, provided that the general
15 announcement of proposed offering sets forth the following
16 required information:

- 17 (i) The name of the issuer of the securities.
- 18 (ii) The full title of the security to be issued.
- 19 (iii) The anticipated suitability standards for prospective
20 purchasers.
- 21 (iv) A statement that (I) no money or other consideration is
22 being solicited or will be accepted, (II) an indication of interest
23 made by a prospective purchaser involves no obligation or
24 commitment of any kind, and, if the issuer is required by paragraph
25 (4) to deliver a disclosure statement to prospective purchasers,
26 (III) no sales will be made or commitment to purchase accepted
27 until five business days after delivery of a disclosure statement
28 and subscription information to the prospective purchaser in
29 accordance with the requirements of this subdivision.
- 30 (v) Any other information required by rule of the commissioner.
- 31 (vi) The following legend: "For more complete information
32 about (Name of Issuer) and (Full Title of Security), send for
33 additional information from (Name and Address) by sending this
34 coupon or calling (Telephone Number)."

35 (B) The general announcement of proposed offering referred
36 to in subparagraph (A) may also set forth the following
37 information:

- 38 (i) A brief description of the business of the issuer.
- 39 (ii) The geographic location of the issuer and its business.

1 (iii) The price of the security to be issued, or, if the price is not
2 known, the method of its determination or the probable price range
3 as specified by the issuer, and the aggregate offering price.

4 (C) The general announcement of proposed offering shall
5 contain only the information that is set forth in this paragraph.

6 (D) Dissemination of the general announcement of proposed
7 offering to persons who are not qualified purchasers, without more,
8 shall not disqualify the issuer from claiming the exemption under
9 this subdivision.

10 (6) No telephone solicitation shall be permitted until the issuer
11 has determined that the prospective purchaser to be solicited is a
12 qualified purchaser.

13 (7) The issuer files a notice of transaction under this subdivision
14 both (A) concurrent with the publication of a general announcement
15 of proposed offering or at the time of the initial offer of the
16 securities, whichever occurs first, accompanied by a filing fee, and
17 (B) within 10 business days following the close or abandonment
18 of the offering, but in no case more than 210 days from the date
19 of filing the first notice. The first notice of transaction under
20 subparagraph (A) shall contain an undertaking, in a form acceptable
21 to the commissioner, to deliver any disclosure statement required
22 by paragraph (4) to be delivered to prospective purchasers, and
23 any supplement thereto, to the commissioner within 10 days of
24 the commissioner's request for the information. The exemption
25 from qualification afforded by this subdivision is unavailable if
26 an issuer fails to file the first notice required under subparagraph
27 (A) or to pay the filing fee. The commissioner has the authority
28 to assess an administrative penalty of up to one thousand dollars
29 (\$1,000) against an issuer that fails to deliver the disclosure
30 statement required to be delivered to the commissioner upon the
31 commissioner's request within the time period set forth above.
32 Neither the filing of the disclosure statement nor the failure by the
33 commissioner to comment thereon precludes the commissioner
34 from taking any action deemed necessary or appropriate under this
35 division with respect to the offer and sale of the securities.

36 (o) An offer or sale of any security issued by a corporation or
37 limited liability company pursuant to a purchase plan or agreement,
38 or issued pursuant to an option plan or agreement, where the
39 security at the time of issuance or grant is exempt from registration
40 under the Securities Act of 1933, as amended, pursuant to Rule

701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions of which are hereby incorporated by reference into this section, provided that (1) the terms of any purchase plan or agreement shall comply with Sections 260.140.42, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, (2) the terms of any option plan or agreement shall comply with Sections 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the California Code of Regulations, and (3) the issuer files a notice of transaction in accordance with rules adopted by the commissioner no later than 30 days after the initial issuance of any security under that plan, accompanied by a filing fee as prescribed by subdivision (y) of Section 25608. The failure to file the notice of transaction within the time specified in this subdivision shall not affect the availability of this exemption. An issuer that fails to file the notice shall, within 15 business days after discovery of the failure to file the notice or after demand by the commissioner, whichever occurs first, file the notice and pay the commissioner a fee equal to the maximum aggregate fee payable had the transaction been qualified under Section 25110.

Offers and sales exempt pursuant to this subdivision shall be deemed to be part of a single, discrete offering and are not subject to integration with any other offering or sale, whether qualified under Chapter 2 (commencing with Section 25110), or otherwise exempt, or not subject to qualification.

(p) An offer or sale of nonredeemable securities to accredited investors (Section 28031) by a person licensed under the Capital Access Company Law (Division 3 (commencing with Section 28000) of Title 4), provided that all purchasers either (1) have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors, controlling persons, or managers (as appointed or elected by the members), or (2) by reason of their business or financial experience or the business or financial experience of their professional advisers who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction. All nonredeemable securities shall be evidenced by certificates that shall have stamped or printed prominently on their face a legend in a form to be prescribed by rule or order of the commissioner restricting transfer

1 of the securities in the manner as the rule or order provides. The
2 exemption under this subdivision shall not be available for any
3 offering that is exempt or asserted to be exempt pursuant to Section
4 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Sec. 77c(a)(11))
5 or Rule 147 (17 C.F.R. 230.147) thereunder or otherwise is
6 conducted by means of any form of general solicitation or general
7 advertising.

8 (q) Any offer or sale of any viatical or life settlement contract
9 or fractionalized or pooled interest therein in a transaction that
10 meets all of the following criteria:

11 (1) Sales of securities described in this subdivision are made
12 only to qualified purchasers or other persons the issuer reasonably
13 believes, after reasonable inquiry, to be qualified purchasers. A
14 corporation, partnership, or other organization specifically formed
15 for the purpose of acquiring the securities offered by the issuer in
16 reliance upon this exemption may be a qualified purchaser only if
17 each of the equity owners of the corporation, partnership, or other
18 organization is a qualified purchaser. Qualified purchasers include
19 the following:

20 (A) A person designated in Section 260.102.13 of Title 10 of
21 the California Code of Regulations.

22 (B) A person designated in subdivision (i) or any rule of the
23 commissioner adopted thereunder.

24 (C) A pension or profit-sharing trust of the issuer, a
25 self-employed individual retirement plan, or an individual
26 retirement account, if the investment decisions made on behalf of
27 the trust, plan, or account are made solely by persons who are
28 qualified purchasers.

29 (D) An organization described in Section 501(c)(3) of the
30 Internal Revenue Code, corporation, Massachusetts or similar
31 business trust, or partnership, each with total assets in excess of
32 five million dollars (\$5,000,000) according to its most recent
33 audited financial statements.

34 (E) A natural person who, either individually or jointly with the
35 person's spouse, (i) has a minimum net worth of one hundred fifty
36 thousand dollars (\$150,000) and had, during the immediately
37 preceding tax year, gross income in excess of one hundred thousand
38 dollars (\$100,000) and reasonably expects gross income in excess
39 of one hundred thousand dollars (\$100,000) during the current tax
40 year or (ii) has a minimum net worth of two hundred fifty thousand

1 dollars (\$250,000). “Net worth” shall be determined exclusive of
2 home, home furnishings, and automobiles. Other assets included
3 in the computation of net worth may be valued at fair market value.

4 Each natural person specified above, by reason of his or her
5 business or financial experience, or the business or financial
6 experience of his or her professional adviser, who is unaffiliated
7 with and who is not compensated, directly or indirectly, by the
8 issuer or any affiliate or selling agent of the issuer, can be
9 reasonably assumed to have the capacity to protect his or her
10 interests in connection with the transaction.

11 The amount of the investment of each natural person shall not
12 exceed 10 percent of the net worth, as determined by this
13 subdivision, of that natural person.

14 (F) Any other purchaser designated as qualified by rule of the
15 commissioner.

16 (2) Each purchaser represents that the purchaser is purchasing
17 for the purchaser’s own account (or trust account, if the purchaser
18 is a trustee) and not with a view to or for sale in connection with
19 a distribution of the security.

20 (3) Each natural person purchaser, including a corporation,
21 partnership, or other organization specifically formed by natural
22 persons for the purpose of acquiring the securities offered by the
23 issuer, receives, at least five business days before securities
24 described in this subdivision are sold to, or a commitment to
25 purchase is accepted from, the purchaser, the following information
26 in writing:

27 (A) The name, principal business and mailing address, and
28 telephone number of the issuer.

29 (B) The suitability standards for prospective purchasers as set
30 forth in paragraph (1) of this subdivision.

31 (C) A description of the issuer’s type of business organization
32 and the state in which the issuer is organized or incorporated.

33 (D) A brief description of the business of the issuer.

34 (E) If the issuer retains ownership or becomes the beneficiary
35 of the insurance policy, an audit report of an independent certified
36 public accountant together with a balance sheet and related
37 statements of income, retained earnings, and cashflows that reflect
38 the issuer’s financial position, the results of the issuer’s operations,
39 and the issuer’s cashflows as of a date within 15 months before
40 the date of the initial issuance of the securities described in this

1 subdivision. The financial statements listed in this subparagraph
2 shall be prepared in conformity with generally accepted accounting
3 principles. If the date of the audit report is more than 120 days
4 before the date of the initial issuance of the securities described
5 in this subdivision, the issuer shall provide unaudited interim
6 financial statements.

7 (F) The names of all directors, officers, partners, members, or
8 trustees of the issuer.

9 (G) A description of any order, judgment, or decree that is final
10 as to the issuing entity of any state, federal, or foreign country
11 governmental agency or administrator, or of any state, federal, or
12 foreign country court of competent jurisdiction (i) revoking,
13 suspending, denying, or censuring for cause any license, permit,
14 or other authority of the issuer or of any director, officer, partner,
15 member, trustee, or person owning or controlling, directly or
16 indirectly, 10 percent or more of the outstanding interest or equity
17 securities of the issuer, to engage in the securities, commodities,
18 franchise, insurance, real estate, or lending business or in the offer
19 or sale of securities, commodities, franchises, insurance, real estate,
20 or loans, (ii) permanently restraining, enjoining, barring,
21 suspending, or censuring any such person from engaging in or
22 continuing any conduct, practice, or employment in connection
23 with the offer or sale of securities, commodities, franchises,
24 insurance, real estate, or loans, (iii) convicting any such person
25 of, or pleading nolo contendere by any such person to, any felony
26 or misdemeanor involving a security, commodity, franchise,
27 insurance, real estate, or loan, or any aspect of the securities,
28 commodities, franchise, insurance, real estate, or lending business,
29 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
30 conversion, or misappropriation of property, or (iv) holding any
31 such person liable in a civil action involving breach of a fiduciary
32 duty, fraud, deceit, embezzlement, fraudulent conversion, or
33 misappropriation of property. This subparagraph does not apply
34 to any order, judgment, or decree that has been vacated, overturned,
35 or is more than 10 years old.

36 (H) Notice of the purchaser's right to rescind or cancel the
37 investment and receive a refund pursuant to Section 25508.5.

38 (I) The name, address, and telephone number of the issuing
39 insurance company, and the name, address, and telephone number
40 of the state or foreign country regulator of the insurance company.

1 (J) The total face value of the insurance policy and the
2 percentage of the insurance policy the purchaser will own.

3 (K) The insurance policy number, issue date, and type.

4 (L) If a group insurance policy, the name, address, and telephone
5 number of the group, and, if applicable, the material terms and
6 conditions of converting the policy to an individual policy,
7 including the amount of increased premiums.

8 (M) If a term insurance policy, the term and the name, address,
9 and telephone number of the person who will be responsible for
10 renewing the policy if necessary.

11 (N) That the insurance policy is beyond the state statute for
12 contestability and the reason therefor.

13 (O) The insurance policy premiums and terms of premium
14 payments.

15 (P) The amount of the purchaser's moneys that will be set aside
16 to pay premiums.

17 (Q) The name, address, and telephone number of the person
18 who will be the insurance policy owner and the person who will
19 be responsible for paying premiums.

20 (R) The date on which the purchaser will be required to pay
21 premiums and the amount of the premium, if known.

22 (S) A statement to the effect that any projected rate of return to
23 the purchaser from the purchase of a viatical or life settlement
24 contract or a fractionalized or pooled interest therein is based on
25 an estimated life expectancy for the person insured under the life
26 insurance policy; that the return on the purchase may vary
27 substantially from the expected rate of return based upon the actual
28 life expectancy of the insured that may be less than, equal to, or
29 may greatly exceed the estimated life expectancy; and that the rate
30 of return would be higher if the actual life expectancy were less
31 than, and lower if the actual life expectancy were greater than the
32 estimated life expectancy of the insured at the time the viatical or
33 life settlement contract was closed.

34 (T) A statement that the purchaser should consult with his or
35 her tax adviser regarding the tax consequences of the purchase of
36 the viatical or life settlement contract or fractionalized or pooled
37 interest therein and, if the purchaser is using retirement funds or
38 accounts for that purchase, whether or not any adverse tax
39 consequences might result from the use of those funds for the
40 purchase of that investment.

(U) Any other information as may be prescribed by rule of the commissioner.

SEC. 5. Section 25102.2 is added to the Corporations Code, to read:

25102.2. (a) The commissioner shall, ~~by rule,~~ require any issuer that *is principally engaged in the business of purchasing, selling, financing, or brokering real estate, and that* relies upon an exemption *authorized under subdivision (e), (f), (h), or (n) of Section 25102, or upon another exemption* from the requirements of Section 25110, other than an exemption provided in Section 25102.5, ~~and that is principally engaged in the business of purchasing, selling, financing, or brokering real estate for an offering which involves the offer or sale of securities to nonaccredited investors or which involves the offer or sale of securities that are not registered with the United States Securities and Exchange Commission,~~ to provide additional information regarding the nature of the proposed offering on a form prescribed by the commissioner. This information shall include ~~any information the commissioner believes to be reasonably related to the protection of the public, and shall include, but not be limited to the names of the principals, the offering disclosure documents provided to prospective purchasers,~~ a list of all state and federal licenses required to further the purposes of the investment, and the names of all licensed persons that will undertake those activities.

(b) Any issuer that *is principally engaged in the business of purchasing, selling, financing, or brokering real estate, and that* relies upon an exemption *authorized by subdivision (e), (f), (g), (h), or (n) of Section 25102 or from another exemption* from the requirements of Section 25110, other than an exemption provided in Section 25102.5, ~~and that is principally engaged in the business of purchasing, selling, financing, or brokering real estate for an offering which involves the offer or sale of securities to nonaccredited investors or which involves the offer or sale of securities that are not registered with the United States Securities and Exchange Commission,~~ shall make reasonable efforts to ensure all of the following:

(1) All persons to whom securities are sold can be reasonably assumed to have the capacity to understand the fundamental aspects

1 of the investment, by reason of their educational, business, or
2 financial experience.

3 (2) All persons to whom securities are sold can bear the
4 economic risk of the investment.

5 (3) The investment in the security is suitable and appropriate for
6 each purchaser, given the purchaser's investment objectives,
7 portfolio structure, and financial situation.

8 (c) An issuer subject to the requirements of subdivision (b) shall
9 make the determination required by subdivision (b) on the basis
10 of information he or she obtains from the purchaser. Relevant
11 information for this purpose includes, at least, the age, investment
12 objective, investment experience, income, net worth, financial
13 situation, and other investments of the prospective purchaser, as
14 well as any other pertinent factors the commissioner may establish
15 through regulation.

16 (d) An issuer subject to the requirements of subdivision (b) shall
17 maintain records of the information used to determine that an
18 investment is suitable and appropriate for each purchaser for at
19 least four years.

20 SEC. 6. Section 25113 of the Corporations Code is amended
21 to read:

22 25113. (a) All securities, whether or not eligible for
23 qualification by coordination under Section 25111 or qualification
24 by notification under Section 25112, may be qualified by permit
25 under this section.

26 (b) (1) An application for a permit under this section shall
27 contain any information and be accompanied by any documents
28 as shall be required by rule of the commissioner, in addition to the
29 information specified in Section 25160 and the consent to service
30 of process required by Section 25165. For this purpose, the
31 commissioner may classify issuers and types of securities.

32 (2) An applicant may file a small company application for permit
33 under this section if it meets all of the following conditions:

34 (A) The applicant is: (i) a California corporation or a foreign
35 corporation, which at the time of filing an application under this
36 subdivision is subject to Section 2115, and neither corporation is
37 a "blind pool" company, as that term is defined by the
38 commissioner; (ii) not engaged in oil and gas exploration or
39 production, or mining or other extractive industries; (iii) not an
40 investment company subject to the Investment Company Act of

1 1940; and (iv) not subject to the reporting requirements of Section
2 13 or 15(d) of the Securities Exchange Act of 1934.

3 (B) The total offering of voting common stock and preferred
4 stock by the applicant to be sold in a 12-month period, within or
5 outside this state, is limited to one million dollars (\$1,000,000),
6 less the aggregate offering price for all securities sold (within the
7 12 months before the start, and during the offering, of the voting
8 common stock or preferred stock) under Rule 504 of the Securities
9 and Exchange Commission, in reliance on any exemption under
10 subdivision (b) of Section 3 of the Securities Act of 1933, or in
11 violation of subdivision (a) of Section 5 of that act, and
12 immediately after the proposed sale and issuance there will be only
13 one class of voting common stock.

14 (C) The minimum offering price of the voting common stock
15 and preferred stock (and the conversion price if the preferred stock
16 is convertible into the voting common stock) to be sold is two
17 dollars (\$2) per share and the applicant files an undertaking with
18 the commissioner that there will be no stock splits, stock dividends,
19 spinoffs, or mergers for a period of two years from the close of
20 the offering. The undertaking notwithstanding, the commissioner
21 may approve a spinoff or merger pursuant to an application for
22 qualification filed by an applicant.

23 (D) The net proceeds from the offering are to be expended in
24 the operations of the business.

25 (E) The offering is made pursuant to a Small Corporate Offering
26 Registration disclosure document based on the Form U-7 as
27 adopted by the North American Securities Administrators
28 Association and any additional requirements as the commissioner
29 shall prescribe, that may include, but not be limited to, investor
30 suitability and due diligence investigation requirements.

31 (F) The application and disclosure document is reviewed and
32 signed by a majority of the members of the board of directors of
33 the applicant.

34 (G) The application shall contain that information and be
35 accompanied by those documents required by rule of the
36 commissioner, in addition to the information specified in Section
37 25610 and the consent to service of process required by Section
38 25165.

1 (c) Qualification of securities under this section becomes
2 effective upon the commissioner issuing a permit authorizing the
3 issuance of those securities.

4 (d) (1) The commissioner shall annually prepare a report, and
5 make that report publicly available by posting the report on the
6 department's Internet Web site, summarizing data collected from
7 persons to which it issues permits pursuant to this section. The
8 report shall include, but not be limited to, a summary of the general
9 categories of investments for which permits are approved; the
10 minimum, maximum, and average net worth required of those
11 persons to whom permits are issued for each category of activity;
12 the least stringent and most stringent suitability standards imposed
13 on persons issued permits for each category of activity; the
14 experience requirements imposed on persons issued permits for
15 each category of activity; the total dollar amount of money sought
16 to be raised per category of activity; the number and nature of
17 enforcement actions taken against permitholders; and any other
18 information the commissioner deems relevant to inform the
19 Legislature about the activities of permitholders and the protections
20 for those who invest with permitholders. The commissioner shall
21 take steps to ensure that the publication of data collected from
22 permitholders does not result in the release of proprietary
23 information about individuals or businesses.

24 (2) A report to be submitted pursuant to paragraph (1) shall be
25 submitted in compliance with Section 9795 of the Government
26 Code.

27 (e) The commissioner may examine those persons to whom
28 permits are issued pursuant to this section to review compliance
29 with the conditions of the permit and other applicable state law.
30 The commissioner may disqualify an offering permitted pursuant
31 to this section if he or she finds that the issuer has materially
32 violated the provisions of its permit.

33 SEC. 7. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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